IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

INCOME TAX REFERENCE No 34 of 1990

For Approval and Signature:

Hon'ble MR.JUSTICE M.S.SHAH
and
Hon'ble MR.JUSTICE D.A.MEHTA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

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Versus

COMMISSIONER OF INCOME-TAX

Appearance:

1. INCOME TAX REFERENCE No. 34 of 1990

MR MK PATEL for Petitioner No. 1

MR BB NAIK for MR MANISH R BHATT for Respondent No. 1

CORAM : MR.JUSTICE M.S.SHAH
and
MR.JUSTICE D.A.MEHTA

Date of decision: 03/10/2001

ORAL JUDGEMENT

(Per : MR.JUSTICE M.S.SHAH)

In this reference at the instance of the assessee, the following questions have been referred for the opinion of this Court for the assessment year 1983-84:-

(i) Whether, on the facts and in the circumstances of the case, the Tribunal was justified in law in holding that the expenditure of Rs.20,490/incurred towards repairs, renovation of old work and colouring work was in the nature of capital expenditure and hence the same was not deductible as revenue expenditure ?

(ii) Whether on the facts and in the circumstances of the case, the Tribunal was justified in law in holding that expenditure of Rs.10,833/- incurred towards renovation of cabins, fixing of partitions etc. was in the nature of capital expenditure and hence the same was not deductible as revenue expenditure ?

(iii) Whether, on the facts and in the circumstances of the case, the Tribunal was justified in law in holding that the amounts of Rs.20,419/- and Rs.10,830/- are accepted by the assessee as expenditure of capital nature and whether there was any material on record for the Tribunal to come to such a finding ?

2. We have heard Mr. M.K. Patel learned counsel for the assessee and Mr. B.B. Naik learned counsel for the revenue.

3. Both the learned counsel agree that in the order giving rise to this reference, the Tribunal followed its decision in the case of the same assessee for the assessment year 1982-83. That order had given rise to I.T.R. No. 282 of 1987 and the question in that reference whether the Tribunal was justified in law in holding that expenditure of Rs.2,05,509/- incurred on office building was in the nature of capital expenditure, was answered by this Court vide its decision dated 14-8-2001 in the negative as the godown in question was earlier used as creche for the children of the female workers employed in its factory and the said premises were then used for the purposes of administrative office. This Court held that at both the points in time i.e. before and after the expenditure was incurred it remained the business asset of the assessee. This Court accordingly held that the assessee had merely made the existing premises suitable for office purpose by putting

business asset to more profitable and efficient use. Hence, the expenditure in question was held to be a revenue expenditure.

4. Following the aforesaid decision, our answer to all the three questions referred to us is in the negative i.e. in favour of the assessee and against the revenue.

5. The Reference accordingly stands disposed of with no order as to costs.

(M.S. Shah,J)

(D.A. Mehta,J)

zgs/-